

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. (d/b/a DENSIFY)
and CIRBA IP, INC.,

Plaintiffs/Counter-Defendants,

v.

VMWARE, INC.,

Defendant/Counter-Plaintiff.

C.A. No. 19-742-GBW

(Consolidated)

PUBLIC REDACTED VERSION

**VMWARE, INC.’S MOTION TO STRIKE THE
EXPERT REPORTS OF DR. VIJAY MADISETTI**

VMware, Inc. respectfully moves the Court for an order striking certain portions of the expert reports of Dr. Vijay Madiseti relating to alleged infringement of U.S. Patent No. 8,209,687.^{1,2}

First, the Court should strike Dr. Madiseti’s new infringement theories (i) differentiating vCLS VMs from other virtual machines in his opening infringement report and (ii) opining that DRS 2.0 evaluates vCLS VMs. (August 19, 2022 Madiseti Opening Rpt., Vol. 2 (Ex. A³) ¶¶ 185, 195.)

Second, the Court should strike Dr. Madiseti’s new infringement theory pertaining to

¹ As the Court dismissed Cirba Inc. as a plaintiff to the infringement claims for this patent (D.I. 752) and denied the motion to modify the case caption (D.I. 1396), IP has been and remains the sole remaining plaintiff for this patent.

² VMware intends to file a *Daubert* motion concerning certain of Dr. Madiseti’s opinions. This motion to strike, however, is procedurally and substantively distinct, as it addresses only issues properly considered under Rule 37(c)(1) of the Federal Rules of Civil Procedure.

³ All Exhibits are attached to the accompanying letter.

DRS 2.0's purported use of the "[REDACTED]" and "[REDACTED]" functions. (*Id.* ¶¶ 127, 181, 192, 193.)

Third, the Court should strike Dr. Madisetti's new infringement theory that VMware DRS may infringe even when it skips the very functions that he identifies as the rules pertaining to each constraint. (October 21, 2022 Madisetti Reply Rpt. (Ex. B) ¶¶ 39, 81.)

Fourth, the Court should strike the unexplained string citations of source code and documents, which are located at the following pages of the exhibits to Dr. Madisetti's opening infringement report:

- Exhibit 18: 38-39 (documents), 47-50 (source code), 95-96 (documents), 99-102 (source code), 143-147 (documents), 172-174 (documents), 195-198 (source code), 198-199 (documents), 228 (documents), and 231-234 (source code);
- Exhibit 19: 38-39 (documents), 47-50 (source code), 94-95 (documents), 98-100 (source code), 100-101 (documents), 141-144 (documents), 169-170 (documents), 192-194 (source code), 195-196 (documents), 225 (documents), and 228-231 (source code);
- Exhibit 20: 35 (documents), 39-40 (documents), 48-52 (source code), 97-98 (documents), 101-104 (source code), 105 (documents), 150-152 (documents), 179-180 (documents), 200-203 (source code), 204-205 (documents), 233 (documents), and 237-240 (source code); and

- Exhibit 21: 55-60 (source code), 60-61 (documents), 110-112 (documents), 115-120 (source code), 166-169 (documents), 203-205 (documents), 233-238 (source code), 239-240 (documents), 274-275 (documents), 278-284 (source code), and 284 (documents).

The grounds for this motion are set forth in the accompanying letter, associated exhibits, and other submissions, filed concurrently with this motion.

WHEREFORE, VMware respectfully requests that the Court grant its motion and enter an order, substantially in the form attached hereto.

Dated: November 21, 2022
Redacted Version: November 28, 2022

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

OF COUNSEL:

Arturo J. González
Michael A. Jacobs
Richard S.J. Hung
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000
agonzalez@mofo.com
mjacobs@mofo.com
rhung@mofo.com

Bitra Rahebi
MORRISON & FOERSTER LLP
707 Wilshire Boulevard
Los Angeles, CA 90017
(213) 892-5200
brahebi@mofo.com

/s/ Anne Shea Gaza

Anne Shea Gaza (No. 4093)
Robert M. Vrana (No. 5666)
Samantha G. Wilson (No. 5816)
Rodney Square
1000 North King Street
Wilmington, DE 19801
(302) 571-6600
agaza@ycst.com
rvrana@ycst.com
swilson@ycst.com

Attorneys for VMware, Inc.

CERTIFICATION PURSUANT TO D. DEL. LR. 7.1.1

Pursuant to District of Delaware Local Rule 7.1.1, counsel hereby certifies that a reasonable effort was made to reach agreement with opposing counsel regarding the subject matter of this Motion, including oral communication involving Delaware counsel, but no agreement was reached.

Dated: November 21, 2022

/s/ Anne Shea Gaza

Anne Shea Gaza (No. 4093)

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(CONSOLIDATED)

**[PROPOSED] ORDER GRANTING VMWARE, INC.'S MOTION TO STRIKE
THE EXPERT REPORTS OF DR. VIJAY MADISETTI**

At Wilmington this ____ day of _____, 2022, having considered VMware, Inc.'s Motion to Strike the Expert Reports of Dr. Vijay Madisetti, and all papers and argument submitted therewith,

IT IS HEREBY ORDERED that the motion is GRANTED and those portions of Dr. Madisetti's report identified below are HEREBY DEEMED STRICKEN.

- The new infringement theories located in Vol. 2 of the August 19, 2022 Opening Report of Dr. Vijay Madisetti at ¶¶ 185 and 195;
- The new infringement theory located in Vol. 2 of the August 19, 2022 Opening Report of Dr. Vijay Madisetti at ¶¶ 127, 181, 192, and 193;
- The new infringement theory located in the October 21, 2022 Reply Report of Dr. Vijay Madisetti at ¶¶ 39, 81; and
- The string citations of source code and documents, located at the following pages of the exhibits to the Opening Report of Dr. Vijay Dr. Madisetti:

- Exhibit 18: 38-39 (documents), 47-50 (source code), 95-96 (documents), 99-102 (source code), 143-147 (documents), 172-174 (documents), 195-198 (source code), 198-199 (documents), 228 (documents), and 231-234 (source code);
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Honorable Gregory B. Williams
United States District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 28, 2022, a copy of the foregoing document was served on the persons listed below in the manner indicated:

BY E-MAIL

Kenneth L. Dorsney
Cortlan S. Hitch
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
kdorsney@morrisjames.com
chitch@morrisjames.com

Gary J. Toman
Weinberg Wheeler
Hudgins Gunn & Dial
3344 Peachtree Road NE, Suite 2400
Atlanta, GA 30326
gtoman@wwhgd.com

Paul D. Clement
Andrew C. Lawrence
Clement & Murphy, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com
andrew.lawrence@clementmurphy.com

Julie M.K. Siegal
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, N.W.
Washington, DC 20004
julie.siegal@kirkland.com

Courtland L. Reichman
Shawna L. Ballard
Jennifer Estremera
Michael G. Flanigan
Reichman Jorgensen Lehman & Feldberg LLP
100 Marine Parkway, Suite 300
Redwood Shores, CA 94065

Christine E. Lehman
Adam Adler
Connor S. Houghton
Aisha Mahmood Haley
Brian C. Baran
Philip J. Eklem
Naveed S. Hasan
Reichman Jorgensen Lehman & Feldberg LLP
1909 K St, NW, Suite 800
Washington, DC 20006

Sarah O. Jorgensen
Reichman Jorgensen Lehman & Feldberg LLP
1201 West Peachtree Street, Suite 2300
Atlanta, GA 30309

Jaime F. Cardenas-Navia
Wesley Lanier White
Khue V. Hoang
Peter T. Mastroianni
Reichman Jorgensen Lehman & Feldberg LLP
750 Third Avenue, Suite 2400
New York, NY 10017

RJ_densify@reichmanjorgensen.com

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

/s/ Robert M. Vrana

Anne Shea Gaza (No. 4093)

Robert M. Vrana (No. 5666)

Samantha G. Wilson (No. 5816)

Rodney Square

1000 North King Street

Wilmington, DE 19801

(302) 571-6600

agaza@ycst.com

rvrana@ycst.com

swilson@ycst.com

Attorneys for VMware, Inc.